IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

Crl.MC.No. 710 of 2007()

ST.460/2006 of J.F.C.M. VI, TRIVANDRUM

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PETITIONER: ACCUSED NOS.1 TO 6

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1. AIR LINK INDIA LTD.,
   VAIBAV COMPLEX, 3 R.D. FLOOR, 4 LEE ROAD,
   KOLKATTA-700 020, REPRESENTED BY ITS
   CONSTITUTED ATTORNEY AND DY. REGIONAL MANAGER,
   COCHIN.

2. MR. SUNANDHAN RAY,
   PRESIDENT & DIRECTOR, AIR LINK INDIA LTD.,
   VAIBAV COMPLEX, 3 R.D. FLOOR, 4 LEE ROAD,
   KOLKATTA-700 020, REPRESENTED BY HIS CONSTITUTED
   ATTORNEY AND DY. REGIONAL MANAGER, COCHIN.

3. MR. ARABINDA RAY, DIRECTOR,
   AIR LINK INDIA LTD., VAIBAV COMPLEX,
   3 R.D. FLOOR, 4 LEE ROAD, KOLKATTA-700 020,
   REPRESENTED BY HIS CONSTITUTED ATTORNEY AND
   DY. REGIONAL MANAGER, COCHIN.

4. MR. SNEHASIS KABIRAJ, DIRECTOR,
   AIR LINK INDIA LTD., VAIBAV COMPLEX,
   3 R.D. FLOOR, 4 LEE ROAD, KOLKATTA-700 020,
   REPRESENTED BY HIS CONSTITUTED ATTORNEY AND
   DY. REGIONAL MANAGER, COCHIN.

5. MR. SUDIPTO SARKAR, DIRECTOR,
   AIR LINK INDIA LTD., VAIBAV COMPLEX,
   3 R.D. FLOOR, 4 LEE ROAD, KOLKATTA-700 020,
   REPRESENTED BY HIS CONSTITUTED ATTORNEY AND
   DY. REGIONAL MANAGER, COCHIN.

6. VINOD G. NAIR,
   DEPUTY REGIONAL MANAGER, AIR LINK INDIA LTD.,
   HARBOUR VIEW, MILLE ROAD, WILLINGDON ISLAND,
   COCHIN-3.

BY ADV. SRI.SUNIL JACOB JOSE

RESPONDENTS: COMPLAINANT/7TH ACCUSED

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1. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. MR. CHANDRASEKHARA PILLAI,
   AMRITHA, T.C.74/1507, PALKULANGARA DEVI TEMPLE,
   EAST NADA, PETTAH, THIRUVANANTHAPURAM.

3. SURESH KUMAR K.,
   RESIDING AT SHANDTH, MRA 117,
   MITHRAPURAM ROAD, ATTUKAL, MANAKADU,
   THIRUVANANTHAPURAM.

R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 710 of 2007

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Dated this the 20th day of March, 2007

O R D E R

The petitioners are accused 1 to 6 in a prosecution under Section 138 of the N.I. Act. The petitioners have come to this Court with the prayer that the prosecution initiated against them may be quashed invoking the powers under Section 482 Cr.P.C.

2. What are the reasons? Two reasons are urged. First of all it is contended that Section 141 of the Act can have no application in so far as the petitioners are concerned as the requisite averments as insisted by **S.M.S. Pharmaceuticals Ltd**. v. **Neeta Bhalla** (2005 (4) KLT 209 (SC)) are not there in the complaint. I have looked into this contention closely. The averments in the first paragraph of the complaint make it very clear that the first accused is a company and other accused are the Directors in charge and responsible to the company as also the President and Director and officials of the said company. I am in these circumstances satisfied that the dictum in **S.M.S. Pharmaceuticals (**supra) can have no application to persuade this court to prematurely terminate the proceedings.

3. Secondly it is contended that the notice of demand, a copy of which is produced as Annex.C, does not convey the details of the cheque in question. It is true that the number and the name of the drawee bank are not revealed in Annex.C. But that cannot deliver to the accused persons any undeserved advantage. Of course, they are at liberty to raise the contention before the court below that they were misled and did not have an opportunity to respond to the notice of demand appropriately. It may not be inapposite in this context to note that a reply notice had actually been sent and in fact no contention was raised that want of details in the notice of demand deprives the petitioners of an opportunity to effectively respond to the notice.

4. I do not in these circumstances find any substance in the prayer to invoke the powers under Section 482 Cr.P.C. I may hasten to observe that I do not intend to foreclose any contention which the petitioners want to raise before the learned Magistrate. I only intend to observe that the powers under Section 482 Cr.P.C. do not deserve to be invoked in this case.

5. This Crl.M.C. is dismissed with the above observations. I take note of the submission of the learned counsel for the petitioners that unnecessary insistence on the personal appearance of the petitioners would

cause undeserved prejudice and hardship to the petitioners, who include aged and sick persons. The prosecution is under Section 138 of the N.I. Act and unless there be sufficient and satisfactory reasons, it may not be necessary to insist on the personal presence of the accused persons. The petitioners shall be at liberty to apply for exemption and the learned Magistrate must proceed to pass appropriate orders on merits without ritualistically insisting on their personal presence to consider such applications.

(R. BASANT)
Judge

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